

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

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MFODonnell

date: **APR 15 1999**

to: Sandra Minney, UTAAP Coordinator

from: District Counsel, Midwest District, Milwaukee

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subject: **Ban on Term Tax Protester and UTAAP Compliance Initiative**

You asked for advice with respect to the following issue: whether maintenance of a database which comprises information about taxpayers who do not file their income tax returns, or who file only returns that are frivolous on their face, or otherwise transmit materials objecting to tax on constitutional and similar grounds, violates Section 3707 of the Restructuring and Reform Act of 1998, Pub. Law 105-206 (the "Act").

Based on the information provided, we believe that it does.

**Facts**

In your memorandum you have provided us with the following facts:

The District maintains a database which tracks taxpayers who have been identified as "non-taxpayers". The database is called the UTAAP database, which stands for Unsupported Tax Avoidance Argument Program. The criteria for identification as a non-taxpayer involves the transmission to the IRS of protest-type literature, and delinquency in income tax filings. Protest-type literature would include materials and FOIA requests that are consistent with those received from known promoters of tax avoidance schemes, and income tax returns that are patently frivolous, such as those with an altered jurat or with all numerical entries shown as zero.

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UTAAP consists of IDRS and Access databases. The databases may be accessed quickly by revenue agents, revenue officers and other IRS personnel by contacting the person responsible for maintaining the database, and the information therein may be manipulated into different formats depending on the information sought. For example, a revenue agent could quickly learn a history of the taxpayer's noncompliant behavior, collection activity that has occurred, his employment, prior audits and banking information.

A taxpayer's information will be purged from this database if the taxpayer complies, by filing and paying his or her taxes for two consecutive years.

The benefits expected from maintenance of such a database are as follows: Providing a resource by IRS employees can determine if they are dealing with a potentially dangerous or troublesome taxpayer; monitoring the current trends in the non-taxpaying community; increasing compliance; and identification of schemes to develop educational materials to deal with these arguments.

#### **Law and Discussion**

Section 3707 of the Act prohibits the IRS from designating taxpayers as illegal tax protesters or "any other like designation". Highlights of the Restructuring and Reform Act of 1998, "Significant Issues Effective Upon Date of Enactment" Dept. of the Treasury, Document 10828, Catalog Number 28052C. Nonfiler designations are still allowed in appropriate cases, but must be removed once the taxpayer has filed income tax returns for two consecutive years and paid all taxes on the returns. The Senate Report indicates that existing designations of tax protester status in archived paper form must also be removed. S.Rep. No. 105-174.

While the drafters of the Act did not appear to contemplate the existence of such a database, and rather focused on the designation of protester status on an individual's master file, we believe that the maintenance of the UTAAP database constitutes a designation similar to that given to tax protesters, and as such, is prohibited by the Act.

We note that this is not a database that tracks nonfilers, which might be permissible under the Act, but rather, non-filers whose actions somehow identify themselves as objectors to the tax system, or at least, imposition of tax on them. This fact alone takes the database out of the exception, in appropriate cases, for transcript designation of non-filers, because the database tracks non-filing objectors, as opposed to non-filers in general. Similarly, the exception for designation of dangerous taxpayers is also inapplicable, because there is no indication that a taxpayer must show himself to be dangerous in order to be placed in the UTAAAP database. It only appears that some dangerous taxpayers will be listed in UTAAAP by virtue of the fact that they are also constitutional objectors.

We also note that the UTAAAP database is not an appropriate means of identifying potentially dangerous taxpayers. If specific facts in a particular case suggest the taxpayer may be a PDT, then existing PDT procedures should be employed. Also, the mere submission of a protest should not be enough to confer PDT status on a taxpayer.

While the database avoids referring to these individuals or entities as tax protesters, we think more than avoidance of the term is called for in order to comply with the spirit of the Act. The legislative history indicates that nonfiler designations are still allowed in appropriate cases; however, we believe that the drafters were referring to those designations on an individual master file, as opposed to a database that consists of a comprehensive list of non-filers. Again, the database does not track non-filers, but rather nonfilers who have been identified as constitutional objectors.

We note that the Chief Operation Officer of the IRS has instructed the Service to stop generating and using the TC 148-02 Illegal Tax Protester Register to start new work, and to eliminate all such databases and ancillary systems that refer to Illegal Tax Protester. See memorandum of John M. Dalrymple, Acting Chief Operations Officer, dated September 30, 1998, a copy of which is attached.

We think that use of the generic name of non-filer or nontaxpayer ascribed to the individuals or entities in this database does not comply with the intent of the act, which is to prohibit the stigmatizing labeling of individuals as

protesters. Staff of the Joint Committee on Taxation, 105th Cong., 2d Sess., General Explanation of Tax Legislation Enacted in 1998, p. 129, (1998). The avoidance of the term tax protester itself does not make the database anything than what it is: a comprehensive collection of the non-filing tax protesters in this district. Mere placement of a taxpayer's name and information in the database is itself a designation similar to that of a tax protester, because all who would access UTAAP would know that any individual or entity found there has sent objectionable materials to the IRS and is a non-filer for at least the last two years.

Please call me at (414) 297-4235 if you have any questions or comments with respect to this matter.

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